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**THIS DISPOSITION  
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Paper No. 20  
BAC

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Alsius Corporation, by change of name from  
Neuroperfusion, Inc.<sup>1</sup>

Serial No. 75/604,187

Adrienne L. White of Burns, Doane, Swecker & Mathis, L.L.P.  
for Alsius Corporation, by change of name from  
Neuroperfusion, Inc.

Kelley L. Williams, Trademark Examining Attorney, Law  
Office 115 (Tomas Vlcek, Managing Attorney).

Before Hairston, Chapman and Rogers, Administrative  
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On December 9, 1998, Neuroperfusion, Inc., later by  
change of name, Alsius Corporation, filed an application to  
register the mark COOL LINE on the Principal Register for  
"surgical devices, namely, catheters" in International  
Class 10. The application is based on applicant's

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<sup>1</sup> The records of the Assignment Branch of this Office indicate  
that the original applicant changed its name to Alsius  
Corporation. (Reel 2036, Frame 0325).

assertion of a bona fide intention to use the mark in commerce.

The Examining Attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the mark COOL LINE, when used on the identified goods of applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. Although applicant requested an oral hearing, it subsequently waived its right to appear at the scheduled oral hearing, and the oral hearing was cancelled.

The Examining Attorney contends that "cool" is descriptive of a purpose of the goods which is to reduce a patient's core body temperature; that "line" is descriptive of both features of applicant's involved goods, (i) the closed-loop tubing which holds the solution used to cool the body, and (ii) the open-ended tubing that is used to administer fluids (i.e., blood, medication); that COOL LINE has a readily understood meaning in relation to catheters; and that the combination of the words into COOL LINE does not create a separate, non-descriptive meaning.

In support of the refusal, the Examining Attorney submitted dictionary definitions of the words "cool" and

"line"<sup>2</sup>; and several excerpted stories retrieved from the Nexis database (based on searches framed essentially as "catheter w/10 cool" and "line W/1 catheter"). In addition, the Examining Attorney requested information about applicant's goods, in response to which applicant stated that there is no informational material distributed in the United States, but applicant submitted a brochure on applicant's product which was "prepared for distribution abroad." (Applicant's request for reconsideration, p. 2.) The Examining Attorney points to various uses of "cools" and "cooling" in this product literature distributed outside the United States.

Applicant contends, on the other hand, that its mark is suggestive, rather than merely descriptive, in relation to applicant's goods; that the Examining Attorney dissected the mark, considering each word separately, and then engaged in a multi-stage reasoning process in order to conclude that COOL LINE is merely descriptive of surgical devices, namely, catheters; that there is no evidence of record that the mark COOL LINE as a whole is merely descriptive of the involved goods; that the prospective

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<sup>2</sup> The Examining Attorney's request (brief, p.2) that the Board take judicial notice of one further dictionary definition attached to the appeal brief is granted. See TBMP §712.01.

purchasers of applicant's goods are "technically knowledgeable buyers and users in the medical field" (reply brief, p. 2); that medical professionals do not use the word "line" to describe closed-loop catheters, rather they use it to refer to administering fluids into or draining fluids from the body; and that doubt on the issue of mere descriptiveness is resolved in applicant's favor.<sup>3</sup> Finally, applicant pointed out that its application for the mark COOL BALLOON, also for catheters, (application Serial No. 75/645,556) was allowed by an Examining Attorney, was published, and was not opposed.

The test for determining whether a mark is merely descriptive is whether the mark immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Moreover, in order to be merely descriptive, the mark must immediately convey information about the goods or services with a "degree of particularity." *In re TMS Corporation of the Americas*, 200

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<sup>3</sup> Applicant also argued that the term "cool" could be perceived as relating to its common meaning as 'excellent,' 'new,' or 'different.' As we must consider the mark in relation to the identified goods, we (like the dissent) reject this argument.

USPQ 57, 59 (TTAB 1978); and In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd, unpub'd, Fed. Cir. February 13, 1991. Whereas, a mark is suggestive if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. See In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ2d 505 (CCPA 1980).

Of course, whether a term or phrase is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services, and the possible significance that the term or phrase would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). See also, In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); and In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991).

The burden of proving that applicant's mark is merely descriptive rests with the Examining Attorney. Viewing the record in its entirety, we find that the Examining Attorney has not established a prima facie showing that the mark COOL LINE is merely descriptive of applicant's "surgical

devices, namely, catheters." Rather, purchasers and users<sup>4</sup> would have to exercise a multi-stage reasoning process to determine any specific descriptive meaning of COOL LINE in relation to applicant's goods. See *In re Sundown Technology Inc.*, 1 USPQ2d 1927 (TTAB 1986); and *In re Tennis in the Round Inc.*, 199 USPQ 496 (TTAB 1978). With regard to applicant's goods, which are "surgical" catheters, not central line catheters, the catheter tubing itself is not "cool/cold." A saline solution is put into the closed-loop portion of the catheter, then as the patient's blood passes around the balloon portions of the closed-loop part of the catheter the blood is cooled down (possibly involving temperature changes as small as fractions of a degree). That is, the surgical catheter is not cool, rather, it is inserted in the surgical patient, then is filled with a saline solution, which circulates through the closed-loop balloon portion of the catheter, and the circulating saline in the catheter ultimately causes the blood passing over it to reduce the patient's body temperature. Thus, the term COOL LINE does not immediately convey to relevant purchasers the merely

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<sup>4</sup> Inasmuch as applicant's goods are surgical catheters, the relevant purchasers of applicant's goods are "technically knowledgeable" medical personnel, and applicant's goods would be used by surgeons and other medical professionals.

descriptive meaning ascribed to it by the Examining Attorney. As explained above, it requires a multi-stage reasoning process to arrive at the conclusion proffered by the Examining Attorney.

In sum, the record before us does not establish that the term COOL LINE has a readily recognized meaning with regard to the involved goods. That is, the mark COOL LINE does not immediately evoke an impression or an understanding of a feature and/or purpose of applicant's surgical catheters. Rather, we conclude that the mark COOL LINE requires several steps of thought to determine any significant feature and/or purpose therefrom.

Finally, if doubt exists as to whether a term is merely descriptive, as it clearly does in this case, it is the practice of this Board to resolve doubt in favor of the applicant and pass the application to publication. See *In re The Stroh Brewery Co.*, 34 USPQ2d 1796 (TTAB 1995). In this way, anyone who believes that the term is, in fact, descriptive, may oppose and present evidence in an inter partes proceeding on this issue to the Board.

**Decision:** The refusal to register under Section 2(e)(1) is reversed.

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Rogers, Administrative Trademark Judge, dissenting:

Because I have no doubt that the purchasers and users<sup>5</sup> of surgical or central line catheters will, when faced with the use of the term "cool line" in conjunction therewith, be immediately apprised of a feature or attribute of the goods, I dissent from the majority's opinion.

Applicant's goods are identified as "surgical devices, namely, catheters." To appreciate the nature of the goods, I take judicial notice of the following definitions from Mosby's Medical Dictionary (4<sup>th</sup> ed. 1994):

**central catheter** a catheter inserted into either a central artery or a central vein for diagnostic or therapeutic procedures.

**central line** an intravenous line inserted for continuous access to a central vein for administering fluids and medicines and for obtaining diagnostic information. Keeping the central line in place ensures accessibility to the venous system in case the veins collapse.

I also note that the product brochure submitted by applicant explains that its product is placed "in the superior vena cava just like a standard central venous catheter," "can be used like any multi-lumen central venous catheter" and combines "two important patient care

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<sup>5</sup> By the term "users" I refer to medical personnel who may, in the delivery of health care, use applicant's product, even though they may not have been involved in, for example, a hospital's decision to purchase a particular brand of surgical or central line catheter.



functions into one familiar package: Fever Management and Central Venous Catheter Capabilities."

Finally, I note the numerous and very relevant Nexis database excerpts from newspaper and periodical articles, which show that the terms "catheter" and "line" are often used together or interchangeably in discussions of goods such as applicant's:

She started the bedtime ritual by handing him a syringe to flush his catheter lines - the only real at-home care he needed during proton treatment. *The Press-Enterprise* (Riverside, CA), May 2, 1999.

She needed - but couldn't find - blouses and nightgowns that gave caregivers access to central-line catheters... *The Boston Globe*, April 11, 1999.

... based upon the alleged negligence of Dr. Robin Hardiman, an Army doctor who inserted a venous catheter line which perforated Kimberly's heart. *The National Law Journal*, May 25, 1998.

After surgery, an intravenous line was attached to a central line catheter into her internal jugular vein. *The National Law Journal*, March 9, 1998.

Another option is to time the removal of the catheter - the line that feeds pain-killer into the spine for a period after surgery... *Albuquerque Journal*, January 5, 1998.

I have a central line catheter in my chest through which I must take medicine 24 hours a day. *The San Francisco Examiner*, September 28, 1997.

A month later, Mr. Roemer landed in the hospital; a blood clot in his catheter line spawned a bacterial infection that nearly killed him. *The New York Times*, August 22, 1997.

... meant learning how to keep clean a central intravenous tube in Jesse's chest called a Broviak catheter. The line was put in place to ease chemotherapy treatments and blood testing. *Business Journal-Sacramento*, June 9, 1997.

The blouses and nightgowns have a special inside pocket to store catheter lines. *Asbury Park Press*, June 3, 1997.

The vascular access ports and catheter line are designed to meet the needs of patients requiring repeated, long-term infusion of medications, intravenous fluids, nutrients or blood products. *Medical Industry Today*, April 11, 1997.

Typically inserted through the jugular vein, the catheter line is pushed through the right chamber of the heart and into the left, or pulmonary artery. *Sacramento Bee*, September 18, 1996.

A nurse attached the syringe to Justin's catheter line and shot it into his blood stream. *Idaho Falls Post Register*, January 28, 1996.

... a device used to flush and clear intravenous catheter lines. *Medical Industry Today*, December 25, 1995.

At the same time, doctors installed a multi-line catheter in her chest for the chemotherapy. *The Morning Call* (Allentown), October 24, 1995.

The fever likely was caused by an infection in the baby's catheter line, which is common for infants who receive prolonged

intravenous feeding. *Seattle Post-Intelligencer*, March 21, 1995.

In short, the term "line" is used as a noun in applicant's purported mark and, given the nature of the goods, would readily be perceived by prospective purchasers and users of the product as meaning "a catheter or wire that may be inserted in a vein, as an intravenous line." It would not be perceived as having any of the other meanings that are listed among the definitions of "line" in a standard medical dictionary.<sup>6</sup> Non-medical dictionary definitions of "line" are inapposite to any consideration of how medical or health-care personnel will perceive the term.

Likewise, use of the term "cool" as an adjective in conjunction with the noun "line" would be readily perceived by prospective purchasers or users of applicant's goods as a reference to temperature, not as applicant argues, as "slang for 'excellent' or 'exciting.'" There are, no

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<sup>6</sup> **line** 1. a connection between two points. 2. a stripe, streak, or narrow ridge, often imaginary, that serves to connect reference points or to separate various parts of the body, as the hairline or nipple line. 3. a black absorption line in a continuous spectrum passing through a medium. 4. an accretion line in the enamel of a tooth marking successive layers of calcification. 5. a catheter or wire that may be inserted in a vein, as an intravenous line. 6. the base line of an electrocardiogram when neither positive nor negative potentials are recorded. 7. line of sight. *Mosby's Medical Dictionary* (4<sup>th</sup> Ed. 1994).

doubt, functional products for which purchasing decisions are influenced by whether the product is perceived as "cool" in the slang sense to which applicant makes allusion. For example, competing brands of automobiles may be more or less marketable, even when equally functional, based on how "cool" they are to prospective purchasers. There is no support, however, for applicant's contention that prospective purchasers or users of surgical or central line catheters would base their decisions on whether to buy or use such products on style or cachet.

That the term "cool" would be perceived, when used by applicant in "cool line," as a reference to temperature, is readily illustrated by applicant's own product brochure, which touts the product as "a more effective solution for temperature control" in patients who are in need of "aggressive fever management." That prospective purchasers or users would, even without the aid of applicant's marketing pitch, so perceive the term "cool" is borne out by reference to the Nexis article excerpts of record, which show that there are "cooling" catheters and "cooling lines" within catheters:

Innercool has catheters that can be delivered to both the arterial and venous system. Arterial catheters are designed to provide isolated, or selective, cooling/re-warming of organs, while venous catheters

are used to induce rapid core body hypothermia and to reverse hypothermia.

The technology consists of a disposable catheter and a console that circulates saline to the catheter. As the saline circulates, it cools or warms the heat exchanger on the tip of catheter. The heat exchanger, in turn, cools or warms the blood. ...

"The idea, by developing the catheter system we've developed, is to cool very, very quickly." ...

In one method, a catheter could be placed into the carotid artery, with the aim of selectively cooling the brain. ...

In another approach, the catheter is placed into the venous circulation, in an effort to cool the "core" body (which includes the brain, heart and lungs). *Medical Industry Today*, March 7, 2000.

A patented antenna inside the catheter creates high temperatures that destroy the diseased prostate tissue. Simultaneously, the catheter cools and protects the adjacent urethra and healthy tissue, hospital officials say. *The Hartford Courant*, September 29, 1999.

Cooling water circulates inside the catheter so the urethra is not harmed. *The Seattle Times*, August 1, 1999.

The Chilli catheter contains small lumens, or tubes, that deliver cooling saline to the tip of the catheter in order to remove heat that can build up during ablation and limit the effectiveness of the procedure. *Medical Industry Today*, July 22, 1998.

A cooling line within the catheter helps to control the temperature of the urethra and rectum. *The Capital* (Annapolis, MD), March 26, 1998.

... lack of blood flow to the spinal cord would leave the patient paralyzed.

The solution? Muehrcke tried a new spinal cord cooling technique, in which cold saline solution was run through catheters that were placed around the spinal cord. The coldness decreased the metabolic rate, and made the spinal cord less prone to injury. *The Florida Times-Union*, September 16, 1997.

Specially designed catheters are threaded up through blood vessels in the groin. A cooling chemical passes through the catheters and lowers the heart's temperature until it is stopped. Surgeons then perform the bypass procedure. *The Houston Chronicle*, May 27, 1996.

The fluid - a modified salt solution infused through an intravenous catheter in the groin and another tube directly into the abdomen - cools and preserves kidneys long enough to allow discussion with the family and formal consent for organ donation. *The Washington Post*, June 15, 1993.

Applicant argues that catheters or intravenous lines are used for delivery or, to use the medical term, infusion of a solution, medicine, etc. Applicant reasons that because the cooling portion of its catheter is a closed loop rather than an open-ended infusion line, its catheter does not truly have a "cool line" and only a cool loop. The argument is disingenuous and, in any event, unavailing. As already noted, "catheter" and "line" are used interchangeably. In addition, the Nexis references above show that there are various catheters that cool through circulation, not infusion, of a solution. Moreover, applicant's product brochure shows that its catheter is

used for both infusion, through open-ended lines connecting, respectively, to the "proximal infusion lumen side port" and the "distal guidewire & infusion port." Thus, applicant's product qualifies as a "line" even under applicant's definition of that term; and it is a "cool" line because of the contiguous cooling loop through which saline solution is passed.

Prospective purchasers and users of applicant's catheter, upon consideration of the term "cool line" used in connection therewith, will immediately know a significant feature or attribute of the product, i.e., that it is a cooling catheter or cooling line catheter. Such purchasers or users will not need to engage in even the slightest degree of cogitation or reasoning to understand the significance of the term when used in conjunction with the product. The fact that others manufacturing apparently competitive catheters have not been shown to be using the term, or the fact that applicant may be the first or only current user of the term, does not render the term non-descriptive and registrable. Accordingly, I would affirm the refusal of registration.